

CONFIDENTIAL**AES Puerto Rico****Issue**

Our concerns regarding potential releases in Puerto Rico of "Agremax," an aggregate of ash generated by the AES PR coal-fired power plant in Guayama, have been largely allayed. Agremax is currently covered by the EPA CCR Rule, which precludes uncontrolled land placement, and is being disposed in appropriate lined landfills.

AES and its subsidiaries, including AES PR, are currently litigating in at least three courts with respect to the CCR final rule and the management and disposal in Puerto Rico of ash generated at the Guayama power plant.

Litigation by citizen's groups and municipalities over the disposal of Agremax/ash in lined landfills is also ongoing.

StatusCoal Combustion Residuals Final Rule Litigation

The EPA CCR rule was finalized in April 2015 and became effective October 2015. AES, amongst a group of seven petitioners - the Utility Solid Waste Activities Group, et al. - has sued the Agency in the U.S. Appeals Court for the District of Columbia to stay the requirements and vacate portions of the CCR rule. EPA held discussions with the petitioners, and in April 2016 DOJ filed a motion with the court to remand certain requirements of the rule and a brief in defense of the Agency's position on the issues remaining under litigation.

Guayama Power Plant Agremax Storage

We understood as of January 2016 that AES was building an impervious liner under the Agremax pile, with construction slated to be completed in May 2016. It is now unclear whether construction has commenced, as EQB has not received a permit application for the liner and neither we nor EQB have been informed of the status of construction. Once Agremax is no longer placed directly on the ground, the pile will cease to be an "existing landfill" under the rule and may potentially no longer be regulated by the rule, although the regulatory status of what would amount to a closed CCR landfill remains under review by ORCR/OGC. Nonetheless, the other rule requirements, such as those for any subsequent beneficial reuse of Agremax, will remain in effect. The solid waste permit issued by EQB in October 2015 for the Agremax pile requires storage of Agremax in a fully enclosed structure, which AES has contested. AES's challenge to EQB's permitting authority over the Agremax pile remains in litigation, and EQB's argument of its Motion to Dismiss was heard, likely successfully, by the PR appellate court in May 2016.

Agremax Disposal

AES told us in January 2016 that Agremax was being sent for disposal in the lined EC Waste El Coqui landfill in Humacao and was not being shipped to the mainland. EQB informed us that

AES is litigating municipal disposal bans before the PR Supreme Court and that no decision has yet been made, while the District Court had previously upheld the bans.

EC Waste is litigating in the Ponce region first instance court with a citizen's group, the Talleboa Committee, over the Committee's blocking of trucks/facility access for ash/Agremax disposal. EC Waste believes they are authorized to accept ash/Agremax by EQB Resolution and the court is exploring this. EQB, and later CEPD/DECA, have met with the Committee to hear their concerns. CEPD is the lead on a response to the Committee's May 2016 letter to Jose Font regarding the potential for, and EPA's regulatory role in, the reclassification by EQB of Agremax/ash to hazardous waste, and the existence of and EPA's actions on PR legacy sites.

The Penuelas municipality is in PR supreme court defending their ordinance ban. EQB's position is that the municipalities cannot supersede EQB on solid waste issues.

ATSDR has received and is considering a request to investigate potential health effects from the management and alleged release of Agremax/ash at the Penuelas Valley Landfill. DECA has provided background information/data requested by ATSDR.

In May 2016 CEPD inspected the El Coqui and Penuelas Valley landfills and confirmed that appropriate operational controls were in place for Agremax/ash disposal, particularly with respect to fugitive dust.

Dominican Republic Lawsuits

In 2006, AES was sued in Virginia by the government of the Dominican Republic for alleged conspiracy and dumping of 80,000 Tons of coal ash in 2003/2004 generated by its subsidiary AES PR. The case was settled in 2007 for a reported \$6 M, and ORC notes that the settlement stated that AES had not violated Dominican Republic law.

In April 2016, AES settled a 2009 lawsuit in Delaware superior court with three families claiming birth defects resulting from the disposal in the Dominican Republic of Agremax/ash generated at the AES Guayama power plant.

Options and Recommendations

- DECA will remain in close coordination with EQB, and, as necessary, ORCR, concerning the applicability of CCR rule requirements and other developments.
- CASD/CEPD/DESA, with DECA technical assistance as needed, will coordinate with the SAB (and confer with ORCR as to national implications) on a potential study of contaminants (arsenic, etc.) in soil and groundwater at PR "legacy" sites such as the AES North Well Field.
- ORC will subsequently assess the viability of the data to support potential legacy site enforcement action, possibly under CERCLA.

Background

CWA Permit

AES has complied with a March 2015 CWA Consent Order issued by the Region to address stormwater permit violations.

EQB Agremax Resolution

At our urging, EQB issued a September 2014 Resolution retracting its earlier Resolutions on Agremax and requiring that Agremax either be disposed, or beneficially used only with prior EQB approval. Also at our and EQB's urging, the PR Electric Power Authority and AES entered into an amended power purchase agreement in July 2015 that allowed on-island disposal, which had been restricted under the previous agreement.

EQB CCR Regulations

We understand that EQB is working on publication of new regulations incorporating the CCR rule and it is in discussion with CASD and ORCR/OGC to this effect.